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Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 161]

RIGHTS-OF-WAY OVER INDIAN LANDS

Consent of Landowners; Power Projects

APRIL 26, 1971.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2 (32 F.R. 13938).

Notice is hereby given that it is proposed to revise §§ 161.3 and 161.27 of Part 161, Subchapter O, Chapter I, of Title 25 of the Code of Federal Regulations. This revision is proposed pursuant to the authority contained in section 161 of the Revised Statutes (5 U.S.C. 301); in the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328); and in the Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961).

The purpose of the amendment deleting the phrase "or to commence construction" from all paragraphs of 25 CFR 161.3 is to eliminate any implication that commencement of construction within a right-of-way may be authorized prior to issuing the conveyance instrument, as in the case of a survey. Regulation 25 CFR 161.15 authorizes the commencement of construction after issuance and delivery of the conveyance instrument granting the right-of-way.

The purpose of further amending 25 CFR 161.3(a) is to expand upon and clarify the meaning of the language "restricted land belonging to a tribe" as used in that paragraph so as to conform to the definition of "tribal land" as set forth in 25 CFR 161.1(d). Replacement of the final words "tribal council" with the word "tribe" results in encompassing any governing body to whom authority is delegated by the tribe, regardless of the nomenclature of that body.

The additional amendments to 25 CFR 161.3(b) and (c) provide conformance in usage of the term "individually owned lands" as defined in 25 CFR 161.1(b) and further serve in the interests of brevity and clarification.

The purpose of the amendment to 25 CFR 161.27(b) is to eliminate duplication of clearance by the Assistant Secretary for Water and Power Resources (formerly Water and Power Development) for certain transmission lines. Clearance for the establishment and construction of transmission lines by power-marketing agencies of the Department of the Interior is inherent in the decision making process of the Assistant Secretary. Therefore, when said agencies apply for

transmission line rights-of-way across Indian lands, clearance by the Assistant Secretary as required by 25 CFR 161.27 (b) is deemed unnecessary.

It is the policy of the Department of the Interior to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendments to the Director of Economic Development, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, DC 20242, within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

As revised, §§ 161.3 and 161.27 read as follows:

§ 161.3 Consent of landowners to grants of rights-of-way.

(a) No right-of-way shall be granted over and across any tribal land, nor shall any permission to survey be issued with respect to any such lands, without the prior written consent of the tribe.

(b) Except as provided in paragraph (c) of this section, no right-of-way shall be granted over and across any individually owned lands, nor shall any permission to survey be issued with respect to any such lands, without the prior written consent of the owner or owners of such lands and the approval of the Secretary.

(c) The Secretary may issue permission to survey with respect to, and he may grant rights-of-way over and across individually owned lands without the consent of the individual Indian owners when (1) the individual owner of the land or of an interest therein is a minor or a person non compos mentis, and the Secretary finds that such grant will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages; (2) the land is owned by more than one person, and the owners or owner of a majority of the interests therein consent to the grant; (3) the whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interests therein whose whereabouts are known, or a majority thereof, consent to the grant; (4) the heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the grant will cause no substantial injury to the land or any owner thereof; (5) the owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof.

§ 161.27 Power projects.

(b) All applications, other than those made by power-marketing agencies of the Department of the Interior, for

authority to survey, locate, or commence construction work on any project for the generation of electric power, or the transmission or distribution of electrical power of 66 kv. or higher involving lands other than tribal lands dealt with in the exception contained in § 161.2(c) shall be referred to the Office of the Assistant Secretary of the Interior for Water and Power Resources or such other agency as may be designated for the area involved, for consideration of the relationship of the proposed project to the power development program of the United States. Where the proposed project will not conflict with the program of the United States, the Secretary, upon notification to that effect, may then proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the project in order to eliminate conflicts with the power development program of the United States, the Secretary shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application.

LOUIS R. BRUCE,
Commissioner.

[FR Doc.71-6381 Filed 5-6-71;8:46 am]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 911]

[Docket No. AO-267-A5]

LIMES GROWN IN FLORIDA

Notice of Recommended Decision and Opportunity To File Written Exceptions With Respect to Proposed Further Amendment to Marketing Agreement and Order

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911; 35 F.R. 16626), hereinafter referred to collectively as the "order", regulating the handling of limes grown in Florida to be made effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "act." Interested persons may file written exceptions to this recommended decision with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, DC 20250,